

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JAN 24 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0100
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
KEVIN LEVI BLACK,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20094386001

Honorable Terry L. Chandler, Judge

AFFIRMED

Robert J. Hirsh, Pima County Public Defender
By Lisa M. Hise

Tucson
Attorneys for Appellant

B R A M M E R, Judge.

¶1 Kevin Black was convicted after a jury trial of manslaughter and sentenced to an aggravated, sixteen-year prison term. Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), in which she avows she has reviewed the record but has found no “arguably

meritorious issues for appeal” and requests that we search the record for error. Black has filed a supplemental brief asserting the trial court erred at sentencing by considering Black’s “alleged involvement . . . in the Ku Klux Klan” and that trial counsel had been ineffective at sentencing in failing to “adequately present [his] medical conditions” and his work in emergency medical services as mitigating factors.

¶2 Viewed in the light most favorable to sustaining Black’s conviction, we find there was sufficient evidence to support the jury’s verdict of guilt and its finding of aggravating factors. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). In November 2009, after a verbal confrontation with his seventy-six-year-old stepfather, Black took a shotgun from his bedroom and shot his stepfather three times, killing him. *See* A.R.S. §§ 13-1103(A)(2), 13-1104(A); *see also* A.R.S. § 13-701(D)(9), (13).

¶3 As noted above, Black contends the trial court considered improper information at sentencing concerning Black’s alleged interest in white supremacist groups. This claim is meritless. At sentencing, the prosecutor referred to evidence that Black had copied materials from white supremacist literature. The court, however, expressly stated it did not consider “any association with [a] white supremacist group” in imposing Black’s sentence. Although Black speculates the court was influenced by the prosecutor’s statements, he cites nothing in the record supporting that inference. *Cf. State v. Munninger*, 213 Ariz. 393, ¶ 14, 142 P.3d 701, 705 (App. 2006) (defendant’s speculation trial court would impose lesser sentence absent improper aggravating factor insufficient). And Black’s sentence was within the prescribed statutory range and was

imposed lawfully. *See* A.R.S. §§ 13-105(13), 13-701(C), 13-704(A), 13-1103(C). Black's assertion that his counsel was ineffective at sentencing is not cognizable on appeal and must instead be raised in a petition for post-conviction relief. *See State v. Spreitz*, 202 Ariz. 1, ¶ 9, 39 P.3d 525, 527 (2002). Accordingly, we do not address that claim further.

¶4 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error. Having found none, we affirm Black's conviction and sentence.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge